

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Business Meeting)
)
_____)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, SEPTEMBER 27, 2006

10:04 A.M.

Reported by:
Peter Petty
Contract Number: 150-04-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

James D. Boyd, Acting Chairperson

Arthur D. Rosenfeld

Jeffrey D. Byron

STAFF and CONTRACTORS PRESENT

B.B. Blevins, Executive Director

William Chamberlain, Chief Counsel

Harriet Kallemeyer, Secretariat

Angela Gould

Rachel Salazar

Linda Kelly

Dave Michel

Paul Kramer

Donna Stone

ALSO PRESENT

Eric Pendergraft
Huntington Beach, LLC
AES Corporation

Rick R. Rothman, Attorney
Bingham McCutchen, LLP

Gary Gorman
Huntington Beach Wetlands Conservancy

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1 P R O C E E D I N G S

2 10:04 a.m.

3 ACTING CHAIRPERSON BOYD: I'd like to
4 call the September 27th meeting of the Energy
5 Commission to order. And I'd like to invite you
6 to say the Pledge with us.

7 (Whereupon the Pledge of Allegiance was
8 recited in unison.)

9 ACTING CHAIRPERSON BOYD: Good morning,
10 everybody. I have a couple of announcements. One
11 a procedural announcement -- well, I guess they're
12 both going to be procedural. I need to announce
13 that we have an addendum to the agenda item 1c.
14 This is the consent calendar; this is the item
15 listed as Western United Resource Development.

16 Secondly, I need to announce that if
17 this meeting goes much more than one hour we run
18 the risk of not having a quorum. So, it's going
19 to move expeditiously.

20 And I'm just being told that I have to
21 announce yet a second amendment. Item 1k. 1k is
22 possible approval of co-sponsorship and use of
23 Energy Commission's name for the California
24 Electricity and Air Qualify Conference October 3-
25 4, 2006, in Sacramento. Other sponsors are the

1 Air Resources Board, the South Coast Air Quality
2 Management District, the Bay Area Air Quality
3 Management District. This is financed and run by
4 our PIER program. So that will be added to the
5 consent calendar as 1k.

6 Being very familiar with this issue I'm
7 glad we made it to the calendar in the nick of
8 time.

9 As I indicated, this is going to have to
10 be an expeditious meeting because our quorum is at
11 risk. This Commissioner wasn't even scheduled to
12 be here today and has an airplane to catch on
13 state business. So, we're going to try to move it
14 along.

15 So, --

16 ASSOCIATE MEMBER BYRON: Commissioner, I
17 move item 1, the consent agenda.

18 ACTING CHAIRPERSON BOYD: Thank you.
19 All in favor?

20 (Ayes.)

21 ACTING CHAIRPERSON BOYD: Thank you;
22 item 1 and all that entails is improved.

23 Item 2, Personal Enterprises, Inc.
24 Possible approval of purchase order 03-05-70-1605b
25 for \$115,2000 with Personal Enterprise, Inc. for a

1 qualify assurance/configuration management
2 consultant to provides services for WREGIS. I'll
3 stop there. And we have Angela Gould.

4 MS. GOULD: Hello. My name's Angie
5 Gould and I'm from the renewables office. And,
6 yes, this is for a quality assurance and
7 configuration management consultant or a QACM for
8 the WREGIS project.

9 The QACM will develop software test
10 plans and acceptance processes; assure that sound
11 industry-proven project management practices are
12 employed throughout the project. And identify and
13 carefully manage any changes to the project.

14 And Personal Enterprises, Incorporated's
15 proposal was selected as the winning bidder for a
16 nine-month term from October 2006 to July 2007.
17 And we ask that the Energy Commission approve this
18 final WREGIS contract.

19 ACTING CHAIRPERSON BOYD: Thank you.

20 COMMISSIONER ROSENFELD: I move item 2.

21 ASSOCIATE MEMBER BYRON: I second.

22 ACTING CHAIRPERSON BOYD: A motion, a
23 second. All in favor?

24 (Ayes.)

25 ACTING CHAIRPERSON BOYD: Thank you, and

1 thank you for the speed reading.

2 Item 3, ProPose. Possible approval of
3 contract 400-06-006 with ProPose for \$110,000 to
4 assist with internal stages of developing an
5 affective new solar home partnership public
6 awareness campaign. And we have with us this
7 morning Rachel Salazar.

8 MS. SALAZAR: Good morning,
9 Commissioners. I'm Rachel Salazar; I'm also from
10 the renewables office.

11 We have before you today the agreements
12 that we're hoping you'll approve. This is in
13 support of the new solar homes partnership program
14 for marketing campaign. And it's proposed for a
15 two-year agreement for \$110,000. Ann Staines is
16 marketing consultant and she'll be instrumental in
17 developing partnerships and also getting the
18 initial activities going before the real campaign,
19 the bigger campaign gets started.

20 ACTING CHAIRPERSON BOYD: Thank you.
21 Any questions?

22 COMMISSIONER ROSENFELD: I move item 3.

23 ASSOCIATE MEMBER BYRON: Second.

24 ACTING CHAIRPERSON BOYD: A motion, a
25 second, all in favor?

1 (Ayes.)

2 ACTING CHAIRPERSON BOYD: Thank you,
3 approved three to nothing. And, again, thank you
4 for the succinct presentation.

5 Item number 4, City of San Diego.
6 Possible approval of \$2,226,689 loan to the City
7 of San Diego to upgrade the lighting and
8 mechanical systems at multiple City-owned
9 facilities to more energy efficient systems. And
10 Adel Suleiman is here to present it.

11 MR. SULEIMAN: Thank you, Commissioner
12 Boyd. Good morning, everyone. Reducing energy
13 consumption is top priority for the City of --

14 COMMISSIONER ROSENFELD: Adel, is your
15 mike on?

16 MR. SULEIMAN: Yes. Okay. Reducing
17 energy consumption is a top priority for the City
18 of San Diego. In May 2006 it passed a resolution
19 to reduce energy consumption from old public and
20 private electric users in their City by 50
21 megawatts during the next ten years. In 2004 the
22 City received \$2.3 million loan from the Energy
23 Commission to install energy efficiency and
24 photovoltaic project in some buildings.

25 This new loan before you today will

1 upgrade old remaining buildings in the City and
2 help meet both the City's and the state's energy
3 efficiency and renewable energy goals.

4 San Diego Gas and Electric Company is
5 contributing \$250,000 in rebates for the
6 efficiency portion of this project. And the
7 Energy Commission's emerging renewable program
8 would contribute \$390,000 for the photovoltaic
9 portion. This loan will pay for old remaining
10 private cost.

11 The Energy Commission Staff has
12 evaluated and determined that this loan request is
13 technically feasible and meets all requirements
14 for a loan under the Energy Conservation
15 Assistance Act. This item has been previously
16 approved by the Efficiency Committee, and staff is
17 seeking your approval.

18 ACTING CHAIRPERSON BOYD: Thank you.
19 Any questions?

20 COMMISSIONER ROSENFELD: I move item 4.

21 ACTING CHAIRPERSON BOYD: Motion.

22 ASSOCIATE MEMBER BYRON: Second.

23 ACTING CHAIRPERSON BOYD: A second.

24 All in favor?

25 (Ayes.)

1 MR. SULEIMAN: Thank you.

2 ACTING CHAIRPERSON BOYD: Approved three
3 to nothing; thank you very much.

4 Reflective Energies, item number 5.
5 Possible approval of amendment 1 to contract 500-
6 03-012 with Reflective Energies to add \$225,000
7 and extend the term of the contract two years to
8 resolve rule 21 distributed generation
9 interconnection technical issues, continue
10 certification of distributed generation equipment
11 interconnection and manage the meetings of the
12 Rule 21 working group. Linda Kelly.

13 MS. KELLY: Linda Kelly from the PIER
14 energy systems integration group. I'm here to ask
15 approval for this amendment which will support
16 continued quarterly meetings of the Rule 21
17 working group.

18 Rule 21 is a CPUC regulation which
19 affects interconnection of nonutility-owned
20 electric power generators in California and
21 provides a set of regulations for interconnection
22 requirements.

23 In 1998 the Energy Commission organized
24 the working group that includes the CPUC, DG
25 developers and equipment manufacturers. This

1 group has, through consensus building, been
2 responsible for developing a simplified process
3 for certifying DG interconnection equipment and
4 simplifying interconnection of those certified DG
5 systems by streamlining the dispute resolution
6 process.

7 These major accomplishments have
8 resulted in a decrease in the average time to
9 interconnect from one year to less than three
10 months in most cases. And interconnections fees
11 have dropped.

12 California has made significant advances
13 in streamlining DG interconnection rules through
14 this group. However, some key technical questions
15 and issues remain.

16 This amendment will support the
17 continued work of the group on issues related to
18 interconnection of combined technologies such as
19 net metered and nonmetered systems, and network
20 distribution system interconnections.

21 ACTING CHAIRPERSON BOYD: Thank you,
22 Linda. And I'll just comment this has been a very
23 productive effort in the years I've been here.

24 ASSOCIATE MEMBER BYRON: I'd like to
25 also add that I'm going to support -- my office is

1 going to work closely with the PUC in coordinating
2 this over the next couple of years to make sure
3 that they begin to get more active and involved.
4 And I want to also thank PIER for continuing to
5 fund this for the next couple of years.

6 ACTING CHAIRPERSON BOYD: Thank you.
7 Comments?

8 COMMISSIONER ROSENFELD: And, of course,
9 this went through the R&D Committee, so I move
10 item 5.

11 ACTING CHAIRPERSON BOYD: Motion.

12 MS. KELLY: I was giving you the short
13 version.

14 (Laughter.)

15 ACTING CHAIRPERSON BOYD: Thank you.

16 ASSOCIATE MEMBER BYRON: Second.

17 ACTING CHAIRPERSON BOYD: A motion and a
18 second.

19 All in favor?

20 (Ayes.)

21 ACTING CHAIRPERSON BOYD: Approved three
22 to nothing. Thank you, Linda.

23 MS. KELLY: Thank you.

24 ACTING CHAIRPERSON BOYD: Item number 6,
25 Trustees of the California State University.

1 Possible approval of ten grant applications
2 totaling \$949,217 in response to the energy
3 innovations small grant program solicitation
4 cycles 05-03. This is PIER funded. And our
5 presenter will be Dave Michel.

6 MR. MICHEL: Good morning,
7 Commissioners. I am Dave Michel; I manage the
8 PIER energy innovations small grant program.

9 Item 6 on the agenda contains ten
10 competitively selected small grant projects that
11 have been approved for Committee consideration by
12 the R&D&D Committee. The projects were selected
13 from 63 grant applications received from
14 solicitation 05-03.

15 We have six renewable related
16 technologies; two in the building end use
17 efficiency areas and two from the energy systems
18 integration area. Five technologies are offered
19 by small business. And five from the academic
20 community.

21 The total funding request for the ten
22 projects is \$949,217, which is well within our
23 project budget.

24 Staff requests the ten grant projects
25 for Commission consideration and approval.

1 ACTING CHAIRPERSON BOYD: Thank you.

2 Any questions, comments?

3 COMMISSIONER ROSENFELD: Comment. I
4 don't know whether Dave Michel even knows this
5 yet, but I was at the California green open
6 competition yesterday. And GreenVolt won the top
7 of its class with \$50,000 in cash.

8 So maybe they don't need our help
9 anymore, I don't know. But anyway, I move the
10 item.

11 MR. MICHEL: Glad to hear that.

12 ACTING CHAIRPERSON BOYD: A motion.

13 ASSOCIATE MEMBER BYRON: And I second
14 it.

15 ACTING CHAIRPERSON BOYD: And a second.

16 MR. MICHEL: Thank you.

17 ACTING CHAIRPERSON BOYD: All in favor?

18 (Ayes.)

19 ACTING CHAIRPERSON BOYD: Approved three
20 to nothing; thank you very much. And thank you,
21 Commissioner Rosenfeld, for that late-breaking
22 news.

23 Item number 7, the highlight of the day.
24 Huntington Beach Generating Station Retool
25 project, docket number 00-AFC-13C. We have two

1 subitems here and possible decision on the amount
2 and final application compensation funds to
3 mitigate for impingement and entrainment losses
4 resulting from the operation of the cooling water
5 systems for Units 3 and 4.

6 And item b, possible approval of a
7 request by AES for the Energy Commission to find
8 the Huntington Beach Generating Station project in
9 substantial compliance with Commission's
10 conditions of certification and required permits.

11 And first I guess we'll lead off with
12 the staff. Mr. Kramer.

13 MR. KRAMER: And we recommend that you
14 first consider item a, and then -- because item b
15 very much follows from --

16 ACTING CHAIRPERSON BOYD: And they need
17 to be done in serial order, so item a.

18 MR. KRAMER: And as far as item a, at
19 your September 14th business meeting you discussed
20 this and then invited staff and the applicant to
21 meet further to talk about additional options to
22 resolve the difference of opinion we had.

23 We conducted a staff workshop on this
24 Monday, September 25th. And prior to that
25 workshop AES submitted a series of proposals to us

1 that we considered. And also Commissioner Byron,
2 on the day of the workshop, sent a letter to the
3 parties asking that we discuss a mitigation
4 package that would be based on the actual
5 operating history of the plant for the first five
6 years, and the full permitted level of the
7 operation for the five-year extension period.

8 From among the AES proposals staff
9 identified a concept that we believe is consistent
10 with the science, if you will, that we are
11 applying in trying to determine the appropriate
12 mitigation for the impacts of the cooling system.

13 And that was a concept called a soft cap
14 where we would base the mitigation on operating
15 levels that are lower than the permitted maximums,
16 but are predicted to never be exceeded in
17 practice. So they're in part informed by
18 operating history, but also then there's a margin
19 added on top of that to achieve, you know, a
20 projected level.

21 AES' proposal, if you turn to page 4 of
22 our report, I think this is probably what we'll be
23 looking at the most today. We have a chart. And
24 AES proposed profile number four there at the
25 bottom of the chart, which would yield mitigation

1 acreage of 59.3 acres.

2 While we like the concept of the soft
3 cap we thought that that proposal was not
4 conservative enough. And we recommend profile
5 three in preference to that, as offering more head
6 room, if you will, so it would be even less likely
7 to be exceeded in practice. The idea there being
8 that although part of this plan is that if they
9 did -- they would calculate the APF every year,
10 based on their actual operating data. And if they
11 did exceed the amount that we had chosen, then
12 they would have to provide additional mitigation.

13 But our concern is if that mitigation
14 comes in in, you know, dribs and drabs, and small
15 amounts, it's harder to apply that effectively to
16 provide actual restored wetlands as mitigation.

17 So, that is the main point that's
18 informing our desire and recommendation for a
19 somewhat higher APF than AES proposed.

20 And that acreage would be 66.8 acres.
21 That's profile number three again in the chart.
22 Also, just for reference, in the chart we have
23 profile number one as the original staff proposal.
24 That assumes flows at 100 percent of the permitted
25 levels. In other words, the plant's operating 24

1 hours a day, seven days a week, 365 days a year.

2 And then Commissioner Byron's request we
3 interpreted to mean that we would average the
4 historical data with the 100 percent levels from
5 profile one; and that comes up with an APF of
6 approximately 72 -- well, exactly 72.9 acres.

7 At the workshop AES gave us updated
8 historical data. And if you averaged that
9 instead, you would get an APF of approximately
10 69.5 acres, which again is pretty close to what we
11 get with profile three.

12 The reason staff prefers profile three
13 over profile two is it has nothing to do with the
14 number of acres that result, it's just the
15 science. An average is just a guess basically.
16 And in this case it turns out to be a little bit
17 more, but the problem is that some years if you
18 draw an average, your plant will operate at higher
19 than the average. And if we size a wetlands
20 mitigation proposal based on the average, some
21 years it's going to produce more than is necessary
22 to offset the impacts of the plant.

23 But we're really worried about the years
24 where the plant is above average in its
25 operations. And in that case the wetlands will

1 not quite keep up with the loss of species that
2 are coming from the operation of the plant.

3 So, in summary, staff is comfortable
4 with either profiles one or three as meeting our
5 scientific principles that we applied in
6 mitigating cooling system impacts.

7 And we have a couple other stipulations
8 that we wanted to clarify things. That because of
9 these profile three or two, for that matter, or
10 four, could result in future mitigation payments,
11 we believe that those should be adjusted for
12 inflation if they're necessary.

13 And we also feel it's important to set a
14 deadline for the initial full payment of the
15 capital costs of restoring the wetlands and the
16 first year's maintenance payment. And we
17 suggested 90 days after the Commission's decision.

18 ACTING CHAIRPERSON BOYD: Okay, thank
19 you, Mr. Kramer. Let's see if we have some
20 questions from up here; but, first I'd like to
21 give Commissioner Byron, who is representing the
22 Siting Committee, a chance --

23 MR. KRAMER: If I might also say, I
24 probably should have shared the good news at the
25 beginning and I forgot to. AES informed us that

1 they are in general agreement with profile three.
2 They did want to make a statement about some of
3 their thoughts, but it appears that staff and AES
4 have at least found something that they can agree
5 upon after these negotiations.

6 ACTING CHAIRPERSON BOYD: Okay. You
7 perhaps stole their thunder, but anyway, I still,
8 let's --

9 ASSOCIATE MEMBER BYRON: Well, yeah, I'd
10 like to --

11 ACTING CHAIRPERSON BOYD: -- turn to
12 Commissioner Byron.

13 ASSOCIATE MEMBER BYRON: Thank you,
14 Commissioner. I'd like to thank the staff
15 obviously, and the applicant for all their efforts
16 in trying to resolve this issue. But it is an
17 extremely unusual one, and I'd like to make clear
18 that I'm a bit uncomfortable with the situation
19 that we find ourselves in today, attempting to
20 determine mitigation rules for a power plant
21 that's been operating already for a number of
22 years.

23 It's unlikely that any decision we reach
24 today will fully satisfy me or any of the other
25 parties. And I do not want the decision that we

1 ultimately reach today to be considered as a
2 precedent going forward.

3 The staff has indicated there's four
4 options that were discussed in a workshop
5 yesterday. And we had opportunity to read those
6 late last night. And I do want to indicate that
7 I'm extremely uncomfortable with a mitigation
8 level that needs to be adjusted in the future.

9 However, it sounds as though we may have
10 some resolution here, and I'm open, obviously, to
11 how we might proceed over the next 35 minutes or
12 so. So, I'll stop there and let's go ahead and
13 hear from the applicant with regard to how we can
14 resolve this issue today.

15 ACTING CHAIRPERSON BOYD: Any other
16 questions of the staff before I turn to the
17 applicant? Let me just summarize what I heard and
18 read over and over and over again last night.

19 But what I heard today is the idea number
20 three is a cap with a, I'll call it a possible
21 true-up done on an annual basis.

22 MR. KRAMER: If necessary, with a --

23 ACTING CHAIRPERSON BOYD: That's why I
24 called it a possible true-up.

25 MR. KRAMER: Right. The plan being that

1 we're very unlikely to need to.

2 ACTING CHAIRPERSON BOYD: I'm not
3 personally comfortable with the term soft cap. So
4 I'm calling it a cap with a possible true-up. So,
5 in any event, any questions?

6 COMMISSIONER ROSENFELD: No.

7 ACTING CHAIRPERSON BOYD: How about
8 let's turn to the applicant.

9 COMMISSIONER ROSENFELD: Eager to hear
10 the applicant.

11 ACTING CHAIRPERSON BOYD: Yes. I, too.

12 MR. PENDERGRAFT: For the record, I'm
13 Eric Pendergraft. I'm the General Manager of the
14 Huntington Beach facility.

15 First of all, I'd like to also thank the
16 staff for the work over the past couple weeks in
17 particular, but throughout this whole process. I
18 think we made some progress, particularly on
19 Monday, and that's appreciated.

20 At the direction of the Commission we
21 did put together a series of options that were
22 consistent with the staff science, but also that
23 we felt were acceptable to us. It should be noted
24 that, you know, we still have some differences of
25 opinion over, you know, how things like the length

1 of the license are being taken into account.

2 We still have some differences over this
3 application of the science and some other factors
4 with respect to our actual plant operations. But,
5 you know, in an effort to put this issue behind
6 us, and move forward, and demonstrate, you know, a
7 willingness to work cooperatively with the agency
8 and move forward, we're willing to accept option
9 three as proposed.

10 I will state that it is almost
11 completely impossible, I believe, for us to ever
12 exceed the limits being proposed absent some sort
13 of significant catastrophe in the system. So I
14 would endorse Commissioner Boyd calling it a cap
15 with a possible but very unlikely true-up.

16 MR. ROTHMAN: And this is Rick Rothman,
17 counsel for AES. I just wanted to comment on
18 Commissioner Boyd's statement with respect to
19 precedent. I think we agree wholeheartedly that
20 this is a unique and unusual situation.

21 ACTING CHAIRPERSON BOYD: I think that
22 was Commissioner Byron's statement, but --

23 MR. ROTHMAN: Commissioner Byron's
24 statement. We agree wholeheartedly --

25 ACTING CHAIRPERSON BOYD: But I agree

1 with him.

2 (Laughter.)

3 MR. ROTHMAN: You know, this was an
4 emergency, a response to an emergency. It was
5 under unusual circumstances that the plant was
6 certified in the first place.

7 These particular conditions, bio-4, bio-
8 5, were unique in and of themselves. And we would
9 not expect that any resolution of how we comply
10 with bio-5 would set precedent for any future
11 determination with respect to mitigation or with
12 respect to any other condition, because I doubt
13 any other one's worded the same way.

14 ACTING CHAIRPERSON BOYD: Well, thank
15 you. And I want to thank you and the applicant
16 and the staff. I think I made some comments last
17 meeting about the fact that I and a few staff
18 members out there in the audience have lived
19 through this entire project. Part of that for me
20 was not even as a member of this Commission.

21 But it's been unusual since day one, and
22 I agree, it remains unusual. And nothing -- the
23 action we're taking here today truly isn't a
24 precedent, but it is a resolution of a complicated
25 issue. My faith, which was shaken last week, I

1 think I said, is restored in the ability of people
2 to come and reason together. And I'm very pleased
3 with, frankly with the outcome. And certainly
4 appreciate the effort that everybody made to come
5 work together.

6 So, any other comments from anyone? Any
7 suggestions? I'm willing to entertain a motion, I
8 believe, for item 3 with a cap with a possible end
9 true-up.

10 ASSOCIATE MEMBER BYRON: If I may, --

11 ACTING CHAIRPERSON BOYD: Commissioner
12 Byron.

13 ASSOCIATE MEMBER BYRON: --
14 Commissioners, I just want to make sure we're
15 clear on the commitments with regard to profile
16 three. And perhaps I'll direct my question to
17 staff.

18 If I understood you correctly you need -
19 - oh, shoot, I'm looking for where I jotted it
20 down, Paul. What -- would you please repeat the
21 payment schedule that would be necessary to comply
22 with our agreement on option three?

23 MR. KRAMER: Say it would be footnote
24 six, \$4,987,288 plus \$52,371 --

25 ASSOCIATE MEMBER BYRON: No, correction.

1 \$523,712, correct?

2 MR. KRAMER: No, that's over ten years.

3 ASSOCIATE MEMBER BYRON: Okay.

4 MR. KRAMER: That's ten annual payments.

5 So we just want the first payment, which would be
6 divide that by ten.

7 ASSOCIATE MEMBER BYRON: So we're
8 looking for ten annual payments going forward --

9 MR. KRAMER: Correct.

10 ASSOCIATE MEMBER BYRON: -- but the
11 license extension is only -- I mean the permit is
12 extended for only five years?

13 MR. KRAMER: Right. The idea is --
14 that's for maintenance. The idea, you're correct,
15 they may be paying for maintenance after their
16 license expires.

17 But the idea was that they should
18 maintain it for the ten-year equivalent of the
19 operating life they've had, or will have, as of
20 2011.

21 They made some -- what we're doing here
22 is avoiding another dispute over the discount rate
23 if they were to try to pay that upfront. They
24 suggested a 12 percent discount rate at the
25 workshop. We know that the Conservancy isn't

1 going to be able to make 12 percent on its money,
2 so if we let them pay a lump sum up front, the
3 Conservancy would be a little bit short of cash
4 eventually for maintenance.

5 So we've said pay it that way. We've
6 also said, I believe, that if they want to make
7 some kind of arrangement on their own with the
8 Conservancy to prepay the money, they can decide
9 what the appropriate discount is between those two
10 parties.

11 But we -- the Conservancy costed out
12 maintenance as ten level payments, ten annual
13 level payments. And we don't want to affect that
14 at this point. I don't know if that was clear,
15 but --

16 ASSOCIATE MEMBER BYRON: Well, I guess I
17 would ask counsel here, is it appropriate to ask
18 an applicant to continue to make payments for
19 mitigation after the plant is shut down?

20 MR. CHAMBERLAIN: Well, we don't know
21 the plant will be shut down. The public agency in
22 this case, the Conservancy, that would be the
23 recipient of those payments is perhaps at some
24 risk that the entity who has this obligation may
25 not longer honor it or may no longer be in

1 business.

2 But I don't think there's anything that
3 precludes your adopting this condition that would
4 establish that regulatory obligation.

5 MR. PENDERGRAFT: Our preference is
6 probably actually to pay a lump sum. We just
7 didn't have time to sort of adequately discuss the
8 discount rate question with the Conservancy. I'm
9 pretty confident that we could come to an
10 agreement.

11 Well, we've proposed 12 percent. I
12 think it's -- I'm not sure what the CPUC grants
13 Edison as a rate of return, but it's probably
14 around 11 or something. So, that's where the
15 number came from, as sort of our cost of capital.

16 ASSOCIATE MEMBER BYRON: Are you
17 comfortable with accepting the terms that they're
18 offering at this time, staff? Or should we --
19 where I'm going with this is that I'd like to try
20 and resolve all of this now rather than leave any
21 open issues. And the 12 percent does seem to be
22 rather high.

23 MR. KRAMER: Yeah, again our concern is
24 the Conservancy's never going to earn that. And
25 so they're going to be short of money at some

1 point for maintenance.

2 So, we were thinking something on the
3 order of 5; that's closer to what, you know, --
4 they're just, for them, investment is a sideline.
5 It's not their main business, or making money.

6 MR. PENDERGRAFT: Yeah, I think in
7 reality this money's not going to be set in a bank
8 to earn interest. I think it will probably go
9 towards funding the restoration right now.

10 I guess as a counter we'd say 8. And we
11 could close this thing and be done with it. Maybe
12 Mr. Gorman can chime in and --

13 MR. GORMAN: Thank you, Eric.
14 Commissioners, my name's Gary Gorman; I'm Project
15 Manager for the Huntington Beach Wetlands
16 Conservancy.

17 We have a small endowment right now; we
18 generate about 4, 4.5 percent. Our board is, as
19 Paul indicated, primarily interested in habitat
20 restoration. We're not about to make money. So
21 our board tends to be very conservative on
22 investing that money.

23 I'd like to offer 6 percent --

24 (Laughter.)

25 MR. GORMAN: -- but, you know, I --

1 MR. PENDERGRAFT: Fine.

2 (Laughter.)

3 MR. PENDERGRAFT: Let's be done with it;
4 six percent discount rate on whatever that payment
5 stream is.

6 (Parties speaking simultaneously.)

7 MR. PENDERGRAFT: This is the
8 negotiation that wasn't supposed to take place.

9 ASSOCIATE MEMBER BYRON: All right,
10 thank you, gentlemen.

11 MR. PENDERGRAFT: Thank you.

12 ACTING CHAIRPERSON BOYD: This is a
13 precedent-setting day, making agreements right
14 here. So, --

15 ASSOCIATE MEMBER BYRON: And as I recall
16 there was one other issue, Paul, with regards to
17 the length of time for the initial payment. Was
18 it 90 days?

19 MR. KRAMER: That's what we were
20 suggesting.

21 ASSOCIATE MEMBER BYRON: I think we have
22 enough here then, Commissioner Boyd. The only
23 other question that I'd raise before we move item
24 a would be if there's any other agencies present
25 here that were involved in the workshop and/or the

1 original hearings that would prefer to comment.

2 ACTING CHAIRPERSON BOYD: Good point.

3 Is there anyone else who would like to make a
4 comment on this item?

5 Apparently not.

6 ASSOCIATE MEMBER BYRON: Is anyone on
7 the phone? No.

8 ACTING CHAIRPERSON BOYD: Okay, then. I
9 think we're prepared for your motion,
10 Commissioner.

11 ASSOCIATE MEMBER BYRON: Well, I believe
12 that --

13 ACTING CHAIRPERSON BOYD: I think you
14 deserve the privilege.

15 ASSOCIATE MEMBER BYRON: I believe then
16 that the motion would be to accept staff's
17 recommendation, as identified in their letter of
18 September 26th to Commissioners and interested
19 parties for profile three, as described in the
20 letter.

21 And the payment schedule that we have
22 discussed thus far. I won't repeat it.

23 ACTING CHAIRPERSON BOYD: So you're
24 making a motion for profile number three, which we
25 have said includes the concept of a cap with a

1 possible ending true-up. And in accordance with
2 the maintenance payment agreement just made here
3 before all of us.

4 ASSOCIATE MEMBER BYRON: Right, to
5 fulfill the requirements of the bio-5 mitigation
6 finding.

7 ACTING CHAIRPERSON BOYD: So that's
8 Commissioner Byron's motion. Is there a second.

9 COMMISSIONER ROSENFELD: With great
10 pleasure.

11 ACTING CHAIRPERSON BOYD: There's a
12 motion and a second.

13 All in favor?

14 (Ayes.)

15 ACTING CHAIRPERSON BOYD: Any opposed?
16 Three to nothing, item a.

17 So, now we'll move to item b, possible
18 approval of a request by AES to have the
19 Commission find they're in substantial compliance
20 with the Commission's conditions of certification.
21 Donna, is that you?

22 MS. STONE: Yes, that is. I'm Donna
23 Stone, Compliance Project Manager on this
24 Huntington Beach Power project. And in the
25 interest of brevity I'll just say that staff

1 suggests that the Commission find AES in
2 substantial compliance with the conditions of
3 certification; that they are in the process of
4 mitigation for their environmental impacts. And
5 that they hold current permits from other
6 agencies.

7 We suggest that you extend the license
8 to September 30, 2011.

9 ACTING CHAIRPERSON BOYD: Thank you.
10 Any questions, Commissioners?

11 ASSOCIATE MEMBER BYRON: Yes, to
12 counsel, please. Could you indicate whether or
13 not we've got sufficient commitment on the part of
14 the applicant to proceed with item b?

15 MR. CHAMBERLAIN: I think based on the
16 statements in the record today, you do.

17 ASSOCIATE MEMBER BYRON: Applicant, care
18 to add anything?

19 MR. PENDERGRAFT: Whether we intend to
20 continue operating for five more years?

21 ASSOCIATE MEMBER BYRON: Whatever you
22 like.

23 MR. PENDERGRAFT: Yes, we'd like the
24 privilege of continuing to operate units 3 and 4
25 for an additional five more years to September 30,

1 2011.

2 ASSOCIATE MEMBER BYRON: Good.

3 ACTING CHAIRPERSON BOYD: Very good.

4 Any other comments from anyone in the audience on
5 this subject? Now, Commissioner Byron.

6 ASSOCIATE MEMBER BYRON: Given the
7 applicant's commitment to item a, I would move
8 that we approve the item b which would allow the
9 continued permit and operation through September
10 30, 2011.

11 ACTING CHAIRPERSON BOYD: In other
12 words, the staff recommendation.

13 ASSOCIATE MEMBER BYRON: Correct.

14 ACTING CHAIRPERSON BOYD: Is there a
15 second?

16 COMMISSIONER ROSENFELD: Second.

17 ACTING CHAIRPERSON BOYD: All in favor?

18 (Ayes.)

19 ACTING CHAIRPERSON BOYD: Approved three
20 to nothing. Congratulations, ladies and
21 gentlemen, you have brought a long process to a
22 satisfactory end. Thank you, all.

23 Item 8, minutes.

24 COMMISSIONER ROSENFELD: I move the
25 minutes.

1 ACTING CHAIRPERSON BOYD: Motion.

2 ASSOCIATE MEMBER BYRON: I second the
3 minutes.

4 ACTING CHAIRPERSON BOYD: Second.

5 All in favor?

6 (Ayes.)

7 ACTING CHAIRPERSON BOYD: Approved three
8 to nothing.

9 Item 9, Commission Committee
10 Presentations. Anyone have anything they'd like
11 to bring up?

12 ASSOCIATE MEMBER BYRON: The only thing
13 that I'm concerned about, Commissioner Boyd, we
14 may have glossed over quickly. I'm not sure that
15 we could approve the meeting minutes that we just
16 did.

17 ACTING CHAIRPERSON BOYD: Oh, on what
18 basis? The fact that there's nothing there?

19 ASSOCIATE MEMBER BYRON: I believe that
20 we are not the three that were present at the last
21 meeting.

22 SECRETARIAT KALLEMEYER: Commissioner
23 Byron is correct. The three persons present at
24 the September 14th meeting were Jackie
25 Pfannenstiel, Commissioner Boyd and Commissioner

1 Byron. And I think Commissioner Rosenfeld was not
2 present at that meeting.

3 COMMISSIONER ROSENFELD: I goofed.

4 ACTING CHAIRPERSON BOYD: Well, --

5 ASSOCIATE MEMBER BYRON: As did I. So
6 we need to correct that.

7 ACTING CHAIRPERSON BOYD: We'll have to
8 move the approval -- continue this item to the
9 next regular meeting of the Commission, or the
10 next scheduled meeting of the Commission, which I
11 don't think is regular.

12 All right. Thank you for that
13 correction.

14 Item 9, any Commission Committee
15 presentations or discussions anyone wants to have?
16 Hearing nothing, I'll move to item 10, the Chief
17 Counsel's report.

18 MR. CHAMBERLAIN: I have no report
19 today.

20 ACTING CHAIRPERSON BOYD:
21 Congratulations. Item 11, the Executive
22 Director's report.

23 EXECUTIVE DIRECTOR BLEVINS: I have no
24 report today. And the Legislative Director has no
25 report today.

1 ACTING CHAIRPERSON BOYD: And the Public
2 Adviser is not to be seen in the room, so I assume
3 no report there.

4 Last item will be public comment.
5 Anyone like to say anything, congratulate us or
6 anything positive?

7 Hearing nothing, I would like to commend
8 the staff, commend the Executive Director for
9 coaching the staff, and thank everyone for their
10 attendance. And the promptness of this meeting,
11 while it didn't set a record, it did quite good.

12 Thank you very much. And I will
13 consider the meeting adjourned.

14 (Whereupon, at 10:40 a.m., the business
15 meeting was adjourned.)

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CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
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thereafter transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
meeting, nor in any way interested in outcome of
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IN WITNESS WHEREOF, I have hereunto set
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